Supreme Court, U.S.
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No. 02-1153

In The

Supreme Court of the United States

ROBERT L. MONTGOMERY,

Petitioner,

v.

G. RAYMOND TRISLER,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Indiana

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether Petitioner, Robert L. Montgomery, is entitled to pursue a second Petition For Writ Of Certiorari in the Supreme Court of the United States on the identical issues and in the same lawsuit for which this Court has previously denied a prior Petition For Writ Of Certiorari?

PARTIES TO THE PROCEEDINGS AND STATEMENT PURSUANT TO RULE 29.6

Robert L. Montgomery (hereinafter "Montgomery") and G. Raymond Trisler (hereinafter "Trisler") are the only parties remaining in the proceedings before this Court. Two other parties had been joined with Montgomery in the original trial court proceedings: Executive Builders, Inc. a privately-held corporation owned entirely by Montgomery, Dolores Montgomery, Arthur Sumrall and Alan Zukerman, all of whom are Indiana residents; and Dolores Montgomery, individually, the spouse of Robert L. Montgomery.

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JURISDICTION

Montgomery cites 28 U.S.C. § 1257(c) as the basis for jurisdiction of the Petition For Writ Of Certiorari. (Petition, p. 4). There is no such statutory provision. Montgomery also asserts a general power of the Supreme Court of the United States "to revise, reverse, and remand a judgment of the Supreme Court of a State". (Petition, p. 3). However, by this Court's own Rules, a "review on a writ of certiorari is not a matter of right, but of judicial discretion . . . [and] . . . will be granted only for compelling reasons." (Supreme Court Of The United States Rule 10.) Montgomery has failed to establish any "compelling reason" herein.

SUMMARY OF RESPONDENT'S ARGUMENT

The issues asserted by Montgomery in the Petition For Writ Of Certiorari have previously been completely briefed, presented and denied by this Court in a prior Petition For Writ Of Certiorari. See, *Robert L. Montgomery v. G. Raymond Trisler*, United States Supreme Court No. 01-663, denied on January 7, 2002; Appendix B attached hereto. Following that denial, the parties returned to the original trial court for collection proceedings on the judgment which had been affirmed throughout the entire course of the appellate process. When the Shelby County, Indiana, Circuit Court then issued orders which would have attached and forfeited certain property of Montgomery for payment of the judgment, the parties negotiated and compromised the remaining balance, which amount was accepted as full satisfaction by Trisler. Yet, despite the settlement, Montgomery thereafter utilized the collection orders of the trial court as a sham foundation for initiating an entirely "new" course of appeals through the Indiana

appellate process; all of which were denied by those courts, deemed to be repetitious of prior rejected appeals, and found to be frivolous in nature.

Undeterred, Montgomery now travels the same road in this Court, seeking a "second bite at the apple" on an issue for which this Court has already denied a Petition For Writ Of Certiorari.[1] As with the Indiana appellate court process, Montgomery's Petition herein is unfounded and should be denied. In addition, this Court should declare Montgomery's Petition For Writ Of Certiorari to be frivolous, and instruct the Shelby County, Indiana, Circuit Court to determine an appropriate amount of appellate attorney fees and damages to be awarded against Montgomery and his counsel, pursuant to Supreme Court Of The United States Rule 42.2.

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[1] The only arguably "new" issue raised in the present Petition For Writ Of Certiorari is Section IV on page 18 of the Petition, asserting that "*pre*judgment interest is not awardable on punitive damages under Indiana [law]". In light of the fact that no court at any level in this cause of action has awarded *pre*judgment interest, this argument by Montgomery is irrelevant. The only monetary interest addressed by the Court during the collection procedure was *post*-judgment interest, which is permissible under Indiana law and has not been challenged by Montgomery in the pending Petition For Writ Of Certiorari.

REASON TO DENY THE PETITION FOR WRIT OF CERTIORARI

MONTGOMERY'S PRESENT PETITION FOR WRIT OF CERTIORARI IS ESSENTIALLY IDENTICAL TO A PRIOR PETITION FOR WRIT OF CERTIORARI WHICH WAS DENIED BY THIS COURT

The present Petition For Writ Of Certiorari is nothing more than the continuation of a fifteen-year-old saga and history of harassment and attacks by Montgomery against Trisler. Throughout the journey, Montgomery has consistently ignored legal procedural rules and the basic concept that, eventually, litigation of an issue must end, even for the losing party. A review of the history of Montgomery's actions against Trisler fully demonstrates that Montgomery has not, and probably never will, accept such a basic doctrine, nor cease his activity against Trisler no matter how many adverse rulings he repeatedly receives from Courts at all levels. The fact is that Montgomery is financially capable of an endless parade of legal actions, and will therefore continue his actions against Trisler until sanctioned by a court in an amount sufficient to actually affect a person of his great wealth. To date, even the punitive damage award of $1,640,000.00 set by the jury at trial, for Montgomery's malicious prosecution of Trisler, has proven inadequate to bring an end to the unfounded and frivolous litigation.

PROCEDURAL HISTORY

This seemingly interminable litigation began when Executive Builders, Inc., under the direction of Montgomery, filed a lawsuit against Trisler in December, 1987,

entitled "Intentional Interference With Business". Trisler denied the allegations in that Complaint, and filed a counterclaim against Executive Builders, together with a third-party complaint against Montgomery and his wife, Dolores Montgomery. In February, 1990, the Shelby County, Indiana, Circuit Court granted summary judgment in favor of Trisler on the original Complaint. In a subsequent appeal of that ruling, the summary judgment was upheld on May 8, 1995, in *Trisler v. Executive Builders, Inc.*, 647 N.E.2d 390 (Ind. App. 1995), *trans. denied.*

Upon remand to the Shelby County, Indiana, Circuit Court, the lawsuit against Executive Builders, Inc. and the Montgomerys proceeded to trial in late June, 1999. On July 7, 1999, in a bifurcated proceeding, a jury awarded compensatory damages in favor of Trisler and against Executive Builders, Inc. and the Montgomerys in the total amount of $178,240.00. The next day, the jury returned an award of punitive damages against Montgomery in the sum of $1,640,000.00, representing approximately 10% of his assets as established by the evidence presented in court. A variety of post-trial motions by Montgomery were then filed, all of which were denied, and the trial court proceeded to enter judgment in the amount awarded by the jury.

Montgomery subsequently turned to the Indiana appellate courts, asserting that the ratio of punitive damages to compensatory damages was impermissibly excessive; that the punitive damages were in violation of the Indiana Constitution; that the punitive damages awarded were so excessive as to violate the Fifth, Eighth and Fourteenth Amendments of the Constitution Of The United States; and other grounds. Those arguments were

considered and rejected by the Court Of Appeals Of Indiana on December 6, 2000. *Executive Builders, Inc. v. Trisler*, 741 N.E.2d 351 (Ind. App., 2000).

Montgomery reacted to the decision with a Petition For Rehearing in that Court, which was unanimously denied on January 22, 2001. A subsequent Petition To Transfer to the Supreme Court Of Indiana, which included a belated contention that the Indiana appellate courts failed to apply a *de novo* standard of review mandated by this Court in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 674, 121 S.Ct. 1678, 149 L.Ed. 2d 674 (2001), was unanimously denied on July 18, 2001; after which Montgomery filed a Motion To Reconsider Denial Of Transfer, in direct contravention of the provisions of the Indiana Appellate Rules. Such "Motion" was also denied by the Supreme Court Of Indiana on August 31, 2001.

Unfazed, Montgomery pursued a Petition For Writ Of Certiorari in the Supreme Court Of The United States, docketed herein on October 15, 2001. On January 7, 2002, the Petition For Writ Of Certiorari was denied without written opinion. Notably, Montgomery does not even mention the prior Petition at any point in his current Petition For A Writ Of Certiorari, which prior Petition contained the exact same arguments now presented in the later Petition For A Writ Of Certiorari (with the sole exception of the aforementioned "prejudgment interest" argument, which has not been an issue at any point in the litigation). To the extent deemed necessary by this Court, Trisler would adopt by reference the arguments presented in Respondent's Brief In Opposition To Petition For Writ Of Certiorari, submitted in the previous proceeding on

November 15, 2001, Supreme Court Of The United States, No. 01-663, as if fully set forth herein.

On February 14, 2002, with all appellate avenues for Montgomery apparently exhausted, the Shelby County, Indiana, Circuit Court scheduled a hearing for purposes of Trisler's attempt to collect those portions of the judgment which remained unpaid by Montgomery, together with post-judgment interest accrued thereon. The trial court ordered the unpaid balance of the principal judgment and accrued interest to be paid, or Trisler would be permitted to collect by way of execution against Montgomery's assets. After the collection hearing, Trisler agreed to a compromise on the amount to be tendered by Montgomery, and the judgment of October 19, 1999 was deemed to be fully paid on February 20, 2002.

Despite the compromise payment and satisfaction of the judgment, Montgomery proceeded to initiate another appeal on March 18, 2002, in the Court Of Appeals Of Indiana, and also filed a separate lawsuit in the United States District Court for the Southern District of Indiana, Indianapolis Division, Cause Number IP01-1805-C T/K, against Trisler and Trisler's attorney, entitled "Complaint For Abuse Of Civil Process; For Violation Of Federal Civil Rights; For Equitable Relief Necessary Pendant Light; And For Damages". The federal lawsuit was filed on January 14, 2002, seven days after this Court's denial of the prior Petition For Writ Of Certiorari. Both the appeal initiated in 2002, and the federal court proceeding, again asserted the same arguments and contentions which were previously argued by Montgomery and rejected by the jury, the trial court, the Court Of Appeals Of Indiana, the Supreme Court Of Indiana, and the Supreme Court Of The United States.

On September 12, 2002, the federal court granted Trisler's Motion To Dismiss on the basis of the "Rooker-Feldman Doctrine", which prevents a federal district court from exercising jurisdiction over claims which require the review of a final state court judgment. *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923); *District Of Columbia Court Of Appeals v. Feldman*, 460 U.S. 462 (1983). See Appendix A attached hereto. Montgomery did not seek any further appellate review of that federal court decision.

On July 25, 2002, the Court Of Appeals Of Indiana again affirmed the Shelby County, Indiana, Circuit Court, finding that the "issues" now raised by Trisler had already been addressed and subjected to the appellate process, and rejected. Consequently, "the law of the case doctrine bars re-litigation of the issue of whether the punitive damage award was excessive". *Montgomery v. Trisler*, 771 N.E.2d 1234 (Ind. App. 2002) at 1239. In addition, that Court went on to hold that "Robert [Montgomery] is attempting to re-litigate issues that have already been decided . . . we find Robert's appeal to be frivolous and without merit, and we believe that an award of appellate attorney fees to Trisler is appropriate." Id. at 1239. Thereafter, the Supreme Court Of Indiana denied Montgomery's subsequent Petition For Transfer on November 7, 2002. Montgomery is now attempting to utilize that denial as a springboard to improperly reiterate before this Court the very same arguments and contentions previously set forth in the prior Petition For Writ Of Certiorari which was denied more than a year ago, on January 7, 2002.

The refusal of Montgomery to acknowledge and accept the fact that this litigation and his right to any appellate review have been exhausted and terminated is entirely without legal support or procedural foundation. When this

Court denied the prior Petition For Writ Of Certiorari on January 7, 2002, Montgomery's legal avenues to obtain a stage upon which to present his arguments, contentions and viewpoints were closed. United States Supreme Court Rule 44 would have permitted Montgomery to file a Petition For Rehearing within twenty-five (25) days after the January 7, 2002 denial of the Petition For Writ Of Certiorari; however, Montgomery did not avail himself of that opportunity. Montgomery's effort to use the post-judgment collection proceedings as a disguise for reviving claims of error in the initial judgment is entirely without any legal basis whatsoever. Montgomery is not entitled to a further review or consideration by this honorable Court, or by any other Court.

CORRECTION AND CLARIFICATION OF MISSTATEMENTS AND OMISSIONS IN THE PETITION FOR WRIT OF CERTIORARI

A number of misstatements and omissions are contained in Montgomery's Petition For Writ Of Certiorari, which incorrectly portray the events of the litigation and the proceedings in the lower courts. Pursuant to Supreme Court Of The United States Rule 15.2, Trisler has "an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatements made in the Petition." Regretfully, Montgomery's misstatements are so disjointed and diffuse in presentation as to be virtually impossible of concise correction herein. Fortunately, essentially all of the misstatements have been addressed in Trisler's Respondent's Brief In Opposition To Petition For Writ Of Certiorari filed in the prior proceeding, Supreme Court Of The United States, No. 01-663, and

in the two separate decisions of the Court Of Appeals Of Indiana. *Montgomery v. Trisler*, 771 N.E.2d 1234 (Ind. App. 2002), and *Executive Builders, Inc. v. Trisler*, 741 N.E.2d 351 (Ind. App. 2000). See Appendices A and B, respectively, to Montgomery's current Petition For Writ Of Certiorari. Trisler would incorporate the findings, decisions and statements in those documents as a correction of Montgomery's misstatements and omissions in the Petition For Writ Of Certiorari now before this Court.

CONCLUSION

The present Petition For Writ Of Certiorari is nothing more than an ill-disguised and frivolous repetition of Montgomery's previously unsuccessful Petition For Writ Of Certiorari. At every level, including the jury, trial court, Court Of Appeals Of Indiana, Supreme Court Of Indiana and Supreme Court Of The United States, the damages and judgment entered against Montgomery were deemed to be justified, appropriate and in compliance with constitutional requirements. Montgomery is not entitled to a "second bite at the apple", nor further consideration by this court or by any other court.

WHEREFORE, for all of those reasons set forth above, G. Raymond Trisler respectfully prays this Court to deny the Petition For Writ Of Certiorari filed by Robert Montgomery, to remand this cause of action to the trial court to determine an appropriate amount of attorney fees and damages to be awarded against Montgomery and his counsel pursuant to Supreme Court of The United States Rule 42.2, and for all other just and proper relief in the premises.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ROBERT L. MONTGOMERY, Plaintiff,	)	
vs.	)	IP 01-1805-C-T/K
MICHAEL E. SIMMONS, ESQ. AND G. RAYMOND TRISLER, Defendants.	)	

Entry On Motion To Dismiss[1]

Plaintiff, Robert L. Montgomery, brought this action against Defendants, Michael E. Simmons and G. Raymond Trisler, under 42 U.S.C. § 1983, alleging a violation of Plaintiff's constitutional rights. Defendants moved to dismiss the First Amended Complaint for lack of subject matter jurisdiction.

[1] This Entry is a matter of public record and is being made available to the public on the court's web site, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in this Entry will govern the case presently before this court, this court does not consider the discussion in this Entry to be sufficiently novel or instructive to justify commercial publication or the subsequent citation of it in other proceedings.

I.

The following allegations are made in the Amended Complaint.[2] Count One states that Mr. Simmons conspired with Mr. Trisler to use the legal process to initiate a counterclaim against Executive Builders and add Mr. Montgomery as a third party for an ulterior purpose not intended by the legal process.[3] This purpose was to reach Mr. Montgomery's assets and collect a disproportionate punitive damages award of "$1,640,000 in a ratio of 109+ times greater than compensatory damages of $15,000 previously awarded by the same jury against Robert Montgomery, in violation of Montgomery's constitutional rights against excessive fines[.]" (Am. Compl. ¶ 1) (emphasis omitted). Mr. Simmons and Mr. Trisler used the power of the Shelby County Circuit Court to collect the punitive damage award against Mr. Montgomery.

The Amended Complaint then states particular acts of Mr. Simmons and Mr. Trisler connected to their efforts to obtain the punitive damage award, such as preparing and signing an affidavit, suing Mr. Montgomery in the '057 case, and moving for summary judgment against him. Mr. Simmons and Mr. Trisler entered into a contingent fee contract. The jury awarded $15,000 in compensatory damages and then Mr. Simmons and Mr. Trisler sought an

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[2] On a Rule 12(b)(1) motion, the court reads the complaint liberally and accepts as true the complaint's well pleaded allegations and reasonable inferences from those allegations. *See Sapperstein v. Hager*, 188 F.3d 852, 855 (7th Cir. 1999).

[3] This is in reference to a lawsuit between Executive Builders, Robert Montgomery, and Dolores Montgomery and Mr. Trisler in the Shelby County Circuit Court, Cause No. 73C01-8803-CP-057 (the "'057 case").

award of punitive damages against Mr. Montgomery. The Indiana court of appeal incorrectly said that the punitive damage award was nine times the compensatory damage award.

Mr. Simmons and Mr. Trisler collected the "$1,640,000++" from Mr. Montgomery plus interest in the sum of $32,000. (Am. Compl. ¶ 10.) "The conspiracy between Simmons and Trisler reached fruition upon exhaustion by Montgomery of the appellate process ... when the Supreme Court of the United States ... denied Montgomery's Petition for Writ of Certiorari." (*Id.* ¶ 9) (emphasis omitted). Thereafter, Mr. Simmons on behalf of Mr. Trisler on January 8, 2002, filed a verified motion for proceeding supplemental and obtained an order to appear from Judge Charles D. O'Connor, the judge in the '057 case, directing Mr. Montgomery to appear at a hearing to answer as to his assets and property which may be subject to satisfaction of the unpaid balance of judgment against him.

Count Two alleges a violation of federal civil rights under 28 U.S.C. § 1343(3). During the compensatory damages phase of the trial, Judge O'Connor allowed Mr. Simmons to compare Mr. Montgomery to Bill Gates and during the punitive damages phase, allowed only Mr. Montgomery's wealth to be tried. The jury's verdict was a "tithe" on its perception of Mr. Montgomery's wealth, and Mr. Montgomery was deprived of a property interest in the amount of "$1,640,000++" by Mr. Simmons and Mr. Trisler. (Am. Compl. ¶¶ 17, 18.) Mr. Simmons and Mr. Trisler were aware that the punitive damage award violated the public policy of the State of Indiana, yet denied Mr. Montgomery his right to no more than a three to one ratio of punitive damages to compensatory damages in violation of his

federal constitutional rights against excessive fines and forfeitures.

II.

Defendants contend that Plaintiff's Amended Complaint is barred by the *Rooker-Feldman* doctrine, see *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); collateral estoppel and res judicata; the applicable statute of limitations; and Defendants did not act under color of state law. As explained below, the court concludes that the *Rooker-Feldman* doctrine directs the conclusion that this court lacks subject matter jurisdiction over the claims asserted in this case. The court therefore does not consider the other arguments advanced by Defendants in support of their motion.

The *Rooker-Feldman* doctrine prevents a federal district court from exercising jurisdiction over claims that require the review of a final state court judgment. *See Manley v. City of Chicago*, 236 F.3d 392, 396 (7th Cir. 2001). The doctrine "applies not only to claims that were actually raised before the state court, but also to claims that are inextricably intertwined with state court determinations." *Id.* (citing *Ritter v. Ross*, 992 F.2d 750, 753 (1993)). To determine whether the doctrine applies, the court decides "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 555 (7th Cir. 1999) (quotation omitted). " 'If the injury alleged resulted from the state court judgment itself, the *Rooker-Feldman* doctrine dictates that the federal courts lack subject matter jurisdiction, even if

the state court judgment was erroneous or unconstitutional.'" *Id.* (quotation and footnote omitted).

The Seventh Circuit has identified a rough guide for determining whether *Rooker-Feldman* applies: "if the federal plaintiff was the plaintiff in state court, apply res judicata; if the federal plaintiff was the defendant in state court, apply *Rooker-Feldman.*" *Garry v. Geils,* 82 F.3d 1362, 1367 (7th Cir. 1996); *see also Homola v. McNamara,* 59 F.3d 647, 650 (7th Cir. 1995). As explained:

> A defendant who has lost in state court and sues in federal court does not assert injury at the hands of his adversary; he asserts injury at the hands of the court, and the second suit therefore is an effort to obtain collateral review. It must be dismissed not on the basis of preclusion but for lack of jurisdiction.

Homola, 59 F.3d at 650.

The court concludes that the *Rooker-Feldman* doctrine bars all claims asserted in the Amended Complaint. As Mr. Montgomery acknowledges, "[t]he genesis of this case began" with the '057 case. (Pl.'s Answer Br. at 2.) His answer brief reveals that the claims asserted in the Amended Complaint arise from actions, inactions, filings and rulings in the '057 case and, to a lesser extent, a related case. (See Answer Br. at 2-7, 9-10, 13.) More specifically, Mr. Montgomery bases his claims in this case on the judgment entered against him in the '057 case especially the punitive damages award, (see *id.* at 12 (stating that Mr. Montgomery seeks to "assert his federal constitutional rights against cruel and unusual punishments" and that *Rooker-Feldman* does not insulate the abuse of process activities of Simmons and Trisler, who . . .

collected $1,942,000.00 . . . through garnishment proceedings. . . . "), and the subsequent collection on the judgment entered against him in the '057 case (*id.* at 11).

Thus, the injury alleged by Mr. Montgomery in this case resulted from the state court judgment against him and collection on that judgment, which collection is inextricably intertwined with the judgment. And, in order to decide the claims raised by the Amended Complaint, this court would have to review the state court judgment against Mr. Montgomery. So, the court finds that the *Rooker-Feldman* doctrine applies. In addition, this case satisfies the rough guide for determining whether *Rooker-Feldman* applies: Mr. Montgomery, Plaintiff in this case, was a Counter-Defendant in the 057 case. Accordingly, this court holds that the *Rooker-Feldman* doctrine prevents this court from exercising jurisdiction over the claims asserted in the Amended Complaint. Defendants' motion to dismiss for lack of subject matter jurisdiction will be granted.

III.

Defendants' motion to dismiss indicates that they intend to file a motion for attorneys' fees pursuant to 42 U.S.C. § 1988. Section 1988 authorizes the court in its discretion to award reasonable attorney's fees to a prevailing party in a § 1983 action. The standard for awarding attorneys' fees to a defendant is exceedingly high. A prevailing defendant may be awarded attorneys' fees only if the court finds that the plaintiff's claim was "frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so." *Hughes v. Rowe*, 449 U.S. 5, 15 (1980) (quotation omitted); *see also Khan v.*

Gallitano, 180 F.3d 829, 837 (7th Cir. 1999). The Seventh Circuit has said that an award of fees to a defendant is appropriate "when a civil rights suit is lacking in *any* legal or factual basis. . . . " *Munson v. Milwaukee Bd. of Sch. Dirs.,* 969 F.2d 266, 269 (7th Cir. 1992) (quotation omitted, emphasis added). Keeping this high standard in mind, the Defendants may file a motion for attorney's fees within fourteen days of today's date, if they choose to seek a fee award.[4]

IV.

The court holds that the *Rooker-Feldman* doctrine bars the claims asserted by Mr. Montgomery in the Amended Complaint, thus requiring that Defendants' motion to dismiss for lack of subject matter jurisdiction be GRANTED.

Defendants shall have fourteen days from the date of this entry within which to file a motion for attorney's fees pursuant to 42 U.S.C. § 1988, if they choose to seek a fee award.

Judgment will be entered accordingly.

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[4] The court points out that the collateral litigation regarding a attorneys' fee request will prolong what has already been tortuous judicial proceedings in this case and others emanating from the underlying disputes between Mr. Montgomery and G. Raymond Trisler, which proceedings date back to 1987.

ALL OF WHICH IS ORDERED this 12th day of September 2002.

/s/ John Daniel Tinder
John Daniel Tinder, Judge
United States District Court

APPENDIX B

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

January 7, 2002

Mr. Michael E. Simmons
54 Monument Circle
Fourth Floor
Indianapolis, IN 46204-2996

Re: Robert L. Montgomery
v. G. Raymond Trisler
No. 01-663

Dear Mr. Simmons:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk